

### **REMARKS**

Applicant recognizes with appreciation that Examiner conducted a telephone interview with the representative of Applicant on April 27, 2009. During the interview, Examiner clarified that Claims 24 and 26 were rejected together with other claims. More importantly, an agreement has been reached that the final rejection under 35 U.S.C. 103 over Aoyama (US 4,048,968) will be withdrawn and prosecution of this application will be reopened.

In this Amendment, Applicant has amended Claim 4 to correct certain informalities. It is respectfully submitted that no new matter has been introduced by the amended claim. All claims are now present for examination and favorable reconsideration is respectfully requested in view of the preceding amendments and the following comments.

#### **REJECTIONS UNDER 35 U.S.C. § 103:**

Claims 1 – 3, 5, 6, 14 – 23, 25, and 27 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Aoyama (US 4,048,968). Claims 4 and 7 – 13 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Aoyama further in view of Murray (US 3,219, 144).

Applicant traverses the rejection and respectfully submits that the embodiments of present-claimed invention are not obvious over Aoyama, or further in view of Murray. There are significant differences between the present invention and cited references that are not obvious to a person of ordinary skill in the art.

**More specifically, Aoyama's valve #48 is not a throttling device wherein cross sectional area of throttling devices reduce when pressure of gas flow increases. Applicant respectfully submits that Examiner's understanding on Aoyama is incorrect. It can clear seen from the text (col. 4, line 10-57) and FIG. 2 of Aoyama (US**

4,048,968) that valve #48 is not a throttling device wherein cross sectional area of throttling devices reduce when pressure of gas flow increases.

It is respectfully submitted that Examiner incorrectly supposes the **alterable condition** of operating valve based on the **immutable result** of operating valve because the result of operating valve cannot be changed and the condition of operating valve can be changed.

This is supported by three reasons:

First: In view of FIG. 2:

The pressure of the gas flow (that is the pressure in passage #24) is connected to the chamber #62, which is in upside position from the diaphragm #64. When the pressure in the chamber #62 increases, the diaphragm #64 will move downward. Downward direction is the direction that the valve head #52 moves away from the valve seat #50, where the cross sectional area of the second EGR valve #48 increases. Now, it is clear from FIG. 2 that when the pressure of the gas flow increases, the cross sectional area of valve #48 increases.

Second: in view of text (col. 4, line 10-57):

There are two conditions in the text (col.4, line 10-57), the first condition (col.4, line 10-26) is “the pressure in the EGR passage 24 between the first and second EGR control valves 26 and 48 is reduced to ...(col.4, line 12-14)”. The result of first condition is “Accordingly, the degree of opening of the second EGR control valve 48 is reduced to ...(col.4, line 20-21)”. Under the first condition, when pressure reduces, the degree of opening of valve #48 is reduces.

After the term “On the contrary, when...(line 27)” is the second condition, the second condition is “the pressure in the EGR passage 24 between the first and second EGR control valves 26 and 48 is increased to ...(col.4, line30-32)”. The result of the second condition is “Accordingly, the degree of opening of the second EGR control valve

48 is increased to ...(col.4, line 37-39)". Thus, under the second condition when pressure increases, the degree of opening of valve #48 is increases.

In view of text (col. 4, line 10-57) and FIG. 2, Aoyama's (US 4,048,968) valve #48 is not a throttling device wherein cross sectional area of throttling devices reduce when pressure of gas flow increases.

Third: In response to Office Action paragraph No. 4 (page 6, line 3-7) that Examiner supposed the condition of operating valve based on the result of operating valve. The result operating valve is the order of nature and cannot be changed—when before the operation of the valve: open valve to reduce pressure and close valve to increase pressure; after the valve is operated: open valve to increase pressure and close valve to reduce pressure. But the condition of operating valve is alterable and can be changed. It is not correct that the examiner suppose the alterable condition of operating valve based on the immutable result of operating valve. This is because the result of operating valve cannot be changed and the condition of operating valve can be changed.

In addition, Aoyama (US 4,048,968) is a Exhaust Gas Recirculation System(EGR), which feed exhaust gas of the engine into the intake passageway to lower the temperature of combustion of combustible mixtures in the engines and to reduce the production of nitrogen oxides (NOx) which pollute the atmosphere(col.1, line18-23). EGR pipe is from exhaust pipe to intake pipe of the engine, it is a closed pipe and do not communicate with atmosphere, there is no noise problem in EGR pipe. To a person of ordinary skill in the art of muffler, Aoyama (US 4,048,968) is significant different from a muffler. Now if a skilled artisan moved the structure of EGR to a muffler creative work is required and it is not obvious. In addition, other reasons for the differences have been provided in the previous responses.

Due to above indicated differences, there is no motivation or reasonable expectation of success to combine Aoyama and/or Murray. Therefore, Even if they are combined, a person of ordinary skill in the art will not discern the present invention at time of its invention.

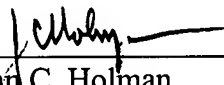
Therefore, the newly presented claims are not obvious over Aoyama and/or Murray. The rejection under 35 U.S.C. § 103 has been overcome. Accordingly, withdrawal of the rejections under 35 U.S.C. § 103 is respectfully requested.

Having overcome all outstanding grounds of rejection, the application is now in condition for allowance, and prompt action toward that end is respectfully solicited.

Respectfully submitted,

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